



U.S. Citizenship  
and Immigration  
Services

B6

SEP 17 2004

FILE: WAC 02 229 51131 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

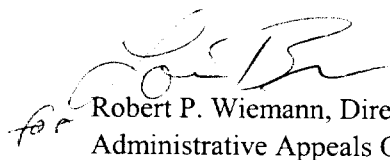
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to  
Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional or skilled worker. The petitioner is a software development and consultancy company. It seeks to employ the beneficiary as a computer systems analyst. As required by statute, the petition was accompanied by certification from the Department of Labor. The director denied the petition because he determined that the beneficiary did not meet the education required by the labor certification.

On appeal, counsel submits a brief.

In pertinent part, Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) also provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is April 30, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of computer systems analyst. In the instant case, item 14 describes the college degree required as a bachelors or equivalent. The major field of study must be computer science, math, or engineering. No experience was required under the job offered or under a related occupation.

As proof of the beneficiary's foreign equivalent bachelor's degree, the petitioner submitted a copy of his foreign degree from Pakistan Military Academy, copies of his transcripts from California State University, Los Angeles and an evaluation, dated March 8, 2001, from Foundation for International Services, Inc. (FIS).

The evaluation states:

In summary, it is the judgment of the Foundation that Faisal Qayyum Malik has the equivalent of graduation from high school in the United States, has the equivalent of two years of university-level credit from an accredited military academy in the United States, has 99 quarter credit hours (2 years) from an accredited university in the United States and has, as a result of his educational background, professional and employment experiences (3 years of experience = 1 year of university level credit), an educational background the equivalent of an individual with a bachelor's degree in computer science from an accredited college or university in the United States.

It is noted that in *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides:

[CIS] uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

The director denied the petition, concluding that the beneficiary's educational credentials and experience are not an acceptable equivalency for a United States baccalaureate degree. The approved labor certification states that the proffered position requires a bachelor's degree or equivalent.

On appeal, counsel asserts:

The above mentioned Immigrant Petition is filed under INA Section 203(b)(3)(A), for a Software Engineer under third Preference/Skilled Worker. The underlined ETA-750 Part A, item # 14 clearly states the requirement of **BACHELOR'S DEGREE OR EQUIVALENT. The Beneficiary has a Foreign equivalent Degree, and over & above that 2 years of coursework towards [a] Bachelor's Degree in Computer Science from California State University. (NOTE NO EXPERIENCE IS USED)]**.

Therefore, the Beneficiary has a foreign equivalent of [a] bachelor's Degree.

Further, Beneficiary has more than 2 years i.e. 99 quarters towards Degree course in Computer Science and 3+ years of progressive experience over and above the Bachelor's Degree in Science. Therefore, the Beneficiary is more than qualified for the job offered.

Also, please see the attached guidelines from the AILA Liaison meeting with CSC held on May 15, 2001, which clearly states that: If there are cases where the skilled worker classification is not being considered even though there are provisions for it on the ETA-750, i.e. state requirement of bachelor's degree or equivalent, please fax a statement explaining to ACD Mary Agnelly at . . .

The AAO cannot conclude that the beneficiary has a foreign equivalent degree. As the evaluation clearly states, the beneficiary's foreign degree is equivalent to two years of university-level credit from an accredited military academy in the United States. The beneficiary also has an additional two years of study towards a degree in computer science. However, in this case, the labor certification clearly indicates that the equivalent of a U.S. bachelor's degree must be a foreign equivalent degree, not a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. A U.S. baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977).

Furthermore, the evaluation in the record used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. The beneficiary was required to have a bachelor's degree on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor.

As stated in 8 C.F.R. § 204.5(l)(3)(ii)(B), to qualify as a skilled worker or a professional, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a bachelor's degree in computer science, math, or engineering, or an equivalent foreign degree.

A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

With regard to the AILA Liaison meeting, counsel should note that the Administrative Appeals Office is never bound by a decision of a service center or district director. See *Louisiana Philharmonic Orchestra vs. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 2000), *aff'd.*, 248 F. 3d 1139 (5<sup>th</sup> Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Based on the evidence submitted, the AAO concurs with the director that the petitioner has not established that the beneficiary possesses the equivalent of a United States bachelor's degree as required by the terms of the labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.